

12-30-98
12.3.8 v.7

Don Ugelstad, P.E.
Plant Engineer
Phone: 206-694-6210
Fax: 206-694-6285



ASH GROVE CEMENT SEATTLE PLANT
3801 EAST MARGINAL WAY SOUTH
SEATTLE, WASHINGTON 98134

Fax

To: Jay Spearman	Attn.:
Fax: 425-820-8475	Date: Wednesday, December 30, 1998
Phone: 425-820-1739	Time: 4:33 PM
Re: Terms and Conditions	Pages: 4
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input checked="" type="checkbox"/> Please Reply <input type="checkbox"/> Please Confirm	

•Comments:

Jay,

Before I can release a PO I need for you to sign our standard Terms & Conditions for engineering services. Also, I need a copy of your insurance certificate. I hope this isn't a problem.

Thanks, Don

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ADDITIONAL TERMS AND CONDITIONS

Engineer: Spearman Engineering, PS

Client: Ash Grove Cement Company

Purchase Order #/Date: 12/30/98

Project: Dredging at Offload Berth

Engineer's Proposal Dated: As Scheduled

1. Client's Purchase Order (if specifically identified above), the written Proposal of Engineer (if specifically identified above), and these Additional Terms and Conditions comprise the entire agreement between the parties (the "Agreement"). There are no agreements, terms, conditions, or representations, oral or written, relating to the Project that are not merged herein and superseded hereby. The terms of these Additional Terms and Conditions control over any inconsistent terms in Engineer's Proposal, including without limitation any statement that terms or conditions contained in Engineer's Proposal are to take precedence over inconsistent or contrary provisions in any document regarding the Project. This Agreement may not be amended except by a writing signed by both parties.

2. Notwithstanding any term or condition to the contrary contained in the Agreement, Client may utilize any reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared hereunder as necessary to fulfill the obligations contemplated by this Agreement.

3. No work shall be undertaken that entails fees or charges in excess of the amount set forth in this Agreement without prior written approval of Client. Hourly fee rates and/or classifications of personnel (if any) specified in this Agreement shall remain effective throughout the term of the Agreement and will not be subject to change without Client's prior written approval.

4. Engineer shall in its performance of work and/or services comply with all applicable statutes and governmental rules and regulations, including without limitation those relating to safety, health and environment.

5. Engineer understands that the facility involved in the Project may include quarrying operations that involve open pit and/or underground mining, and in such cases, Engineer is responsible for ensuring that, prior to entering Client's facility, all personnel caused to be brought on-site by Engineer shall have been provided all training required by the Mines Safety and Health Administration, if applicable.

6. A. Throughout the period when work is being performed on the Project and until its final acceptance by Client, Engineer shall maintain the following insurance, in form and with insurers acceptable to Client, and providing the following coverage's:

(1) Commercial General Liability. Engineer shall maintain commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, including death, and property damage. Such insurance shall contain coverage for broad form property damage, contractual liability (including, without limitation, that specifically assumed herein), and products and completed operations insurance for a minimum of twenty-four (24) months after final acceptance of work by Client, and shall not exclude explosion, collapse, underground excavation or lateral support. Any policy shall (i) be endorsed to name Client and any affiliated corporation(s) and their respective directors, officers and employees (collectively, "Affiliates") as additional insured; (ii) be endorsed to be primary to and noncontributory with any insurance maintained by Client and Affiliates; (iii) contain a waiver of any rights of subrogation in favor of Client and Affiliates; and (iv) contain a separation of insured provision.

(2) Automobile Liability. If licensed vehicles will be used in connection with the performance of the Project, Engineer shall carry and maintain automobile liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence combined single limits for bodily injury and property damage. If the work includes transportation of hazardous materials, the policy shall include, without limitation, coverage for risks of transportation of hazardous materials, including overturn and upset.

(3) Workers' Compensation. Engineer shall carry and maintain insurance in accordance with the applicable laws relating to workers' compensation, with respect to all of its employees working on the Project, regardless of whether such coverage or insurance is mandatory or merely elective under the law. Engineer shall also provide, if required by law, insurance to meet the requirements of the Federal Longshoreman and Harbor Workers Act or Federal Maritime Employers Liability Law (Jones Act). Engineer shall also maintain employers liability coverage with limits of not less than One Million Dollars (\$1,000,000) per accident. Any policy shall contain a waiver of rights of subrogation to Client and Affiliates. If Client is required by any applicable law to pay any workers' compensation premiums with respect to employees of Engineer, Engineer shall reimburse Client for such payment.

(4) Architects & Engineers Errors & Omissions. Unless waived by Client, Engineer shall maintain architects & Engineers errors & omissions coverage (as determined by Client to be appropriate and acceptable), with limits of no less than One Million Dollars (\$1,000,000) per each claim and One Million Dollars (\$1,000,000) aggregate.

(5) Prior to the commencement of any work on the Project, Engineer shall provide for Client's review and approval certificates of insurance and policy endorsements reflecting compliance with all applicable requirements set forth in this Paragraph A. Such certificates and policy endorsements shall be kept current throughout the period when work is being performed on the Project and until its final acceptance by Client (and for two (2) years thereafter for products and completed operations liability and pollution liability), and shall provide for thirty (30) days advance written notice to Client in the event of cancellation or material change adversely affecting the interests of Client. In jurisdictions requiring mandatory participation in a monopolistic state workers' compensation fund, the insurance certificate requirements for the coverage required under Paragraph A(3) will be satisfied by a letter from the appropriate state agency confirming participation in accordance with statutory requirements. Insurer(s) should be rated A or better in the Best's Key Rating Guide.

B. If Engineer shall subcontract any of this work to any third party, Engineer will be directly responsible for protecting, defending and holding Client harmless from any loss caused by such third party if the third party has failed to carry and maintain the required insurance as set forth in applicable portions of Paragraph A.

C. In addition to its other obligations under this section regarding insurance, Engineer agrees to pay and to protect, defend, save harmless and indemnify Client against any liability for damages sustained whether through Engineer or by any subcontractor, materialman or other party supplying labor, materials, or services in the performance of the work covered by this Agreement resulting from Engineer's acts or omissions, failure to perform, delays in performance and interference or default in the performance of the work to be done under this Agreement.

Engineer shall protect, defend and save Client harmless from any liability, including costs and expenses, for, or on account of, any patented or unpatented invention, article or appliance manufactured or used in the performance of this Agreement, including their use by Client, and further agrees to pay all loss and expense incurred by Client by reason of any such claims or suits, including attorneys' fees.

In addition to its other obligations hereunder, Engineer agrees to protect, indemnify, defend and hold harmless Client from and against (a) all claims, causes of action, liabilities, obligations, demands, costs and expenses (including attorneys' fees) arising out of injury to (including death of) persons or damage to property alleged to have been caused by any act or omission of Engineer, its subcontractors, agents, employees or invitees, or growing out of or incidental, directly or indirectly, to the performance of this Agreement regardless of how such injury, death or damage be caused, and (b) all damages, judgments and expenses (including attorneys' fees) caused by any negligent act or omission of Engineer or anyone who performs work in the prosecution of this Agreement. If there are such injuries to persons or damage to property unsettled upon completion of this Agreement, final settlement of sums otherwise due between Client and Engineer may be deferred at the option of Client until such claims are adjusted or indemnity acceptable to Client is furnished by Engineer. In addition, Client may offset from sums otherwise due Engineer an amount equal to said damages including any damages sustained by Client as a result of the failure of Engineer to perform its work properly, timely or in accordance with its obligations and requirements herein; provided, final payment or payment in full by Client of sums owing pursuant to this Agreement shall not be deemed a waiver of any right of Client hereunder.

7. Engineer agrees to accept full and exclusive liability for and indemnify Client against the payment of any and all contributions and withholding deductions for unemployment insurance, worker's compensation insurance, old age pensions, annuities, income taxes, or otherwise, now or hereafter imposed by any law or enactment of the United States or of any state, district or jurisdiction measured by the wages, salaries, or other compensation paid to persons employed by the Engineer or any of its subcontractors in connection with the performance of the work and/or services hereby provided for, so far as the Engineer or Client may be required to pay or collect or deduct and pay such contributions and taxes, and also any and all such contributions and taxes measured by the compensation to be paid to the Engineer (or which may be paid by the Engineer to any subcontractor) hereunder, which the Engineer is required to pay or which the Client is required to collect or deduct and pay. The Engineer agrees that Engineer is, and during the performance hereof will continue to be, registered as an employer under Federal and State laws, as evidenced by Photostat or certified copies of certificates of registration to be submitted by the Engineer to Client upon request.

8. If the work involves the taking of samples for inspection and/or analysis, and unless Client notifies Engineer otherwise in writing, all samples or sample residue will be returned to Client at Client's expense at the following address:

_____, ATTENTION:
(complete if applicable) within thirty (30) days after submission to Client of Engineer's report concerning same.
Engineer will be responsible for proper packaging and shipment of all samples and sample residue in accordance with all applicable laws, rules, regulations and ordinances.

9. Client reserves the right to request, and Engineer agrees to furnish upon such request, allocation of costs between material and labor as may be required for computation of tax due under any applicable sales or use tax law or regulation.

10. All materials and labor shall be contracted for in Engineer's own name and Client shall not be liable therefor. Neither the final payment nor any part of any retained percentage shall become due until the Engineer shall, if requested by Client, deliver to the Client a complete release of all liens arising out of this agreement, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Engineer may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to Client, to indemnify Client against any lien. If any lien remains unsatisfied after all payments are made, the Engineer shall refund to Client all funds that the latter may be compelled to pay discharging such a lien, including all costs and reasonable attorneys' fees.

11. If the work or services involves the acceptance by Engineer of property owned by Client into the custody of Engineer for any purpose, the Engineer agrees to return said property in at least as good condition as when received.

12. Engineer is prohibited from assigning or transferring any portion of this Agreement or subcontracting any portion of the work to any party without the prior written approval of Client.

13. The relationship of the parties is strictly one of owner and independent Engineer. Nothing herein shall be deemed to create any employer/employee, partnership or other relationship. Engineer shall handle this contract as a subcontract within the meaning of Presidential Executive orders and other state and federal laws and regulations dealing with nondiscrimination and equal employment opportunity, and will comply with all such orders, laws and regulations.

This Agreement is executed by duly authorized representation of each of the parties on the date(s) set forth below.

CLIENT:

ENGINEER:

Ash Grove Cement Company

By:

By:

Title:

Title

Date:

Date